

AMENDED IN SENATE AUGUST 6, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 137

Introduced by Assembly Member Olberg

January 13, 1995

~~An act to amend Sections 2070, 2071, 2072.7, 2073.3, 2074.6, 2074.8, 2075, 2075.5, and 2077 of, to add Sections 2071.2, 2074.9, 2075.6, and 2079.5 to, and to repeal Section 2076.5 of, the Fish and Game Code, relating to endangered and threatened species, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 137, as amended, Olberg. ~~Endangered~~ Candidate, endangered, and threatened species.

(1) Existing law establishes the California Endangered Species Act for the protection of various species.

This bill would require the Governor to establish a commission composed of persons with specified qualifications to study the economic impact of protecting candidate, threatened, and endangered species under the act. The study would be required to include, but not be limited to, an examination of the public and private cost of regulatory activities, the cost of taking private property, and the cost of species and habitat decline or loss and the value and economic benefit or cost of species protection, as described. The bill would require the commission to prepare majority and, if necessary, minority reports of the study and would require

those reports to be submitted to the Legislature by December 31, 1997. The bill would also require the California Research Bureau of the California State Library to provide staffing for the commission.

(2) Existing law requires the Department of Fish and Game to pay the cost of administration of the act from the Endangered and Rare Fish, Wildlife, and Plant Species Conservation and Enhancement Account in the Fish and Game Preservation Fund, a continuously appropriated fund.

Because this bill would impose new administrative duties under the act, the bill would make an appropriation.

~~The California Endangered Species Act provides for listing of endangered species and threatened species by the Fish and Game Commission, and provides procedures by which the Department of Fish and Game may recommend to the commission, and by which interested persons may petition the commission, to list, or remove from a list, any species that meets specified criteria.~~

~~This bill would define “interested person” and “interested party” for purposes of these provisions.~~

~~The bill would provide that after January 1, 1996, species may not be added to the list of endangered species or to the list of threatened species except by statute enacted by the Legislature, and unless a economic assessment report required by the bill shows that the benefits to be derived from the action exceed the estimated costs associated with protecting the species.~~

~~The bill would delete a provision of existing law that permits the commission to add species to the lists by emergency regulation.~~

~~The bill would provide that no environmental impact report is required to be prepared to remove a species from the list of endangered species or the list of threatened species list unless an environmental impact report was prepared when the species was listed on the list. The bill would require the commission to appoint a panel of scientific experts knowledgeable about the species to review the Department of Fish and Game’s report to the commission on the petition.~~

~~This bill would require the commission to annually prepare and submit to the Governor and the Legislature a list of~~

~~species that the commission recommends be added to the list of endangered species or to the list of threatened species, and would require the report to include specified documents.~~

~~The bill would also provide that just compensation shall be paid for the taking of private or public property, and would, for that purpose, define “taking.”~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 2070 of the Fish and Game Code~~

2 ~~SECTION 1. Section 2099 is added to the Fish and~~
3 ~~Game Code, to read:~~

4 ~~2099. (a) On or before July 1, 1997, the Governor shall~~
5 ~~establish a commission as specified in Section 2100 to~~
6 ~~study the economic impact of protecting candidate,~~
7 ~~threatened, and endangered species under this chapter.~~

8 ~~(b) The study conducted pursuant to subdivision (a)~~
9 ~~shall include, but not be limited to, an examination of the~~
10 ~~cost of regulatory activities, the cost of providing just~~
11 ~~compensation for any actual or potential taking of private~~
12 ~~property, and the cost of species and habitat decline or~~
13 ~~loss. The cost shall include both public and private costs.~~

14 ~~(c) The assessment of economic impact shall include~~
15 ~~the added value and economic benefit or cost of species~~
16 ~~protection and the effect of that economic impact on~~
17 ~~tourism, recreational, scientific, biomedical, and~~
18 ~~agricultural revenues.~~

19 ~~(d) The commission shall seek counsel from a wide~~
20 ~~range of economists, environmentalists, ecologists, and~~
21 ~~other persons who are developing economic and other~~
22 ~~models that calculate the cost of environmental~~
23 ~~regulations, including the benefits of environmental~~
24 ~~protection and the cost of environmental degradation.~~

25 ~~(e) The commission shall attempt to identify areas of~~
26 ~~agreement among the members of the commission and~~
27 ~~shall clearly identify any areas of disagreement.~~

28 ~~(f) The commission shall prepare a majority report~~
29 ~~and, if necessary, a dissenting or minority report of the~~

1 study conducted pursuant to subdivision (a), which shall
2 be submitted to the Legislature by December 31, 1997.

3 SEC. 2. Section 2100 is added to the Fish and Game
4 Code, to read:

5 2100. (a) The commission established pursuant to
6 Section 2099 shall represent the full range of opinions and
7 viewpoints regarding the protection of candidate,
8 endangered, and threatened species and the regulatory
9 taking of private property. The membership of the
10 commission shall consist of equal numbers of persons
11 meeting each of the following criteria:

12 (1) Persons who advocate the primacy of the market.
13 This group shall include advocates of the free market
14 philosophy and representatives of regulated industries
15 and landowners, including the extractive industries.

16 (2) Persons who advocate that natural resources and
17 endangered species are public trust resources, the
18 protection of which should be regulated. This group shall
19 include conservation biologists, environmental
20 economists, historic preservationists, and others who
21 advocate that the market should take full account of the
22 claims of public trust values associated with protection of
23 the public's natural heritage and the cost of
24 environmental degradation.

25 (b) The California Research Bureau shall provide
26 staffing for the commission.

27 ~~is amended to read:~~

28 ~~2070. (a) The commission shall establish a list of~~
29 ~~endangered species and a list of threatened species. The~~
30 ~~commission shall recommend that the Legislature add~~
31 ~~species to either list pursuant to subdivision (b), and shall~~
32 ~~itself remove species from either list if it finds, upon the~~
33 ~~receipt of sufficient scientific information pursuant to this~~
34 ~~article, that the action is warranted.~~

35 ~~(b) On and after January 1, 1996, species may not be~~
36 ~~added to the list of endangered species or to the list of~~
37 ~~threatened species except by statute enacted by the~~
38 ~~Legislature. No species may be added to the list of~~
39 ~~endangered species or to the list of threatened species~~
40 ~~unless the economic assessment report prepared~~

1 ~~pursuant to paragraph (1) of subdivision (b) of Section~~
2 ~~2075.5 shows that the benefits to be derived from the~~
3 ~~action exceed the estimated costs associated with~~
4 ~~protecting the species.~~

5 ~~SEC. 2. Section 2071 of the Fish and Game Code is~~
6 ~~amended to read:~~

7 ~~2071. The commission shall adopt guidelines by which~~
8 ~~an interested person may petition the commission to~~
9 ~~recommend to the Legislature that a species be added to~~
10 ~~the list of endangered species or the list of threatened~~
11 ~~species, or by which an interested person may petition~~
12 ~~the commission to remove a species from either the list~~
13 ~~of endangered species or the list of threatened species.~~

14 ~~SEC. 2.5. Section 2071.2 is added to the Fish and Game~~
15 ~~Code, to read:~~

16 ~~2071.2. “Interested person” or “interested party,” for~~
17 ~~purposes of this article, means a person who is able to~~
18 ~~demonstrate personal and immediate harm from a~~
19 ~~government action or inaction affecting the~~
20 ~~environment.~~

21 ~~SEC. 3. Section 2072.7 of the Fish and Game Code is~~
22 ~~amended to read:~~

23 ~~2072.7. The department may, in the absence of a~~
24 ~~petition from an interested party, recommend to the~~
25 ~~commission that a species be added to, or that the~~
26 ~~commission remove a species from, either the list of~~
27 ~~endangered species or the list of threatened species. If it~~
28 ~~makes a recommendation under this section, the~~
29 ~~department shall include the information specified in~~
30 ~~Section 2072.3. A department recommendation under~~
31 ~~this section shall be considered by the commission as a~~
32 ~~petition with a departmental recommendation to accept~~
33 ~~and consider as described in subdivision (b) of Section~~
34 ~~2073.5, and is subject to Sections 2074 to 2079, inclusive.~~

35 ~~SEC. 4. Section 2073.3 of the Fish and Game Code is~~
36 ~~amended to read:~~

37 ~~2073.3. (a) The commission shall publish a notice in~~
38 ~~the California Regulatory Notice Register of the receipt~~
39 ~~of a petition prepared pursuant to Section 2072.3 by the~~
40 ~~department, or by an interested party and referred to the~~

~~1 department, pursuant to Section 2073, or the~~
~~2 commencement of an evaluation, to recommend the~~
~~3 addition of a species to, or to remove a species from, the~~
~~4 list of endangered species or the list of threatened species~~
~~5 pursuant to Section 2072.7. At a minimum, the notice shall~~
~~6 include both of the following:~~

~~7 (1) The scientific and common name of the species.~~

~~8 (2) Habitat type, if that information is available in the~~
~~9 petition.~~

~~10 (b) The commission shall notify interested persons~~
~~11 pursuant to Section 2078, by mail, of the notices prepared~~
~~12 pursuant to subdivision (a), and shall mail a copy of the~~
~~13 notice to those persons.~~

~~14 SEC. 5. Section 2074.6 of the Fish and Game Code is~~
~~15 amended to read:~~

~~16 2074.6. (a) The department shall promptly~~
~~17 commence a review of the status of the species concerned~~
~~18 in the petition. Within 12 months of the date of~~
~~19 publication of a notice of acceptance of a petition for~~
~~20 consideration by the commission pursuant to paragraph~~
~~21 (2) of subdivision (a) of Section 2074.2, the department~~
~~22 shall provide a written report to the commission, based~~
~~23 upon the best scientific information available to the~~
~~24 department, which indicates whether the petitioned~~
~~25 action is warranted, which includes a preliminary~~
~~26 identification of the habitat that may be essential to the~~
~~27 continued existence of the species, and which~~
~~28 recommends management activities and other~~
~~29 recommendations for recovery of the species.~~

~~30 (b) If the petition is to remove a species from the list~~
~~31 of endangered species or the list of threatened species, no~~
~~32 environmental impact report shall be required to be~~
~~33 prepared unless an environmental impact report was~~
~~34 prepared when the species was listed on the list of~~
~~35 endangered species or the list of threatened species.~~

~~36 SEC. 6. Section 2074.8 of the Fish and Game Code is~~
~~37 amended to read:~~

~~38 2074.8. Except as provided in Section 2074.9, nothing~~
~~39 in this article imposes any duty or obligation for, or~~
~~40 otherwise requires, the commission or the department to~~

1 ~~undertake independent studies or other assessments of~~
2 ~~any species when reviewing a petition and its attendant~~
3 ~~documents and comments.~~

4 ~~SEC. 7. Section 2074.9 is added to the Fish and Game~~
5 ~~Code, to read:~~

6 ~~2074.9. The commission shall appoint a panel of~~
7 ~~scientific experts knowledgeable about the species to~~
8 ~~review the scientific information and recommendations~~
9 ~~contained in the department's report to the commission~~
10 ~~prepared pursuant to Section 2074.6. The panel shall~~
11 ~~forward its comments to the commission.~~

12 ~~SEC. 8. Section 2075 of the Fish and Game Code is~~
13 ~~amended to read:~~

14 ~~2075. The commission shall schedule the petition for~~
15 ~~final consideration at its next available meeting after~~
16 ~~receipt of the departmental report provided pursuant to~~
17 ~~Section 2074.6 and the comments of the panel appointed~~
18 ~~pursuant to Section 2074.9. The commission shall~~
19 ~~distribute the pending agenda for that meeting pursuant~~
20 ~~to Section 2078. The commission shall make the~~
21 ~~department's report, and the comments of the panel, or~~
22 ~~copies thereof, which were provided pursuant to Sections~~
23 ~~2074.6 and 2074.9, available for review upon request.~~

24 ~~SEC. 9. Section 2075.5 of the Fish and Game Code is~~
25 ~~amended to read:~~

26 ~~2075.5. At the meeting scheduled pursuant to Section~~
27 ~~2075, the commission shall make one of the following~~
28 ~~findings:~~

29 ~~(a) The petitioned action is not warranted, in which~~
30 ~~case the finding shall be entered in the public records of~~
31 ~~the commission and the petitioned species shall be~~
32 ~~removed from the list of candidate species maintained~~
33 ~~pursuant to Section 2074.2.~~

34 ~~(b) The petitioned action is warranted, in which case~~
35 ~~the commission shall publish a notice of that finding.~~

36 ~~(1) If the petitioned action is the addition of a species~~
37 ~~to the list of endangered species or the list of threatened~~
38 ~~species, the commission shall cause the preparation of an~~
39 ~~economic assessment report with respect to the~~
40 ~~petitioned action. The purpose of the economic~~

~~assessment report is, in part, to comply with Section 11346.54 of the Government Code. The economic assessment report shall include all of the following:~~

~~(A) A preliminary assessment of the cost impact of the petitioned action on local government and private landowners.~~

~~(B) Potential funding sources, including in-kind activities, for any management or recovery actions likely to be required by the petitioned action.~~

~~(C) The information required by Section 11346.54 of the Government Code.~~

~~(D) A determination of whether the benefits to be derived from protecting the species exceed the estimated costs associated with protecting the species.~~

~~(2) If the petitioned action is the addition of a species to the list of endangered species or the list of threatened species, the commission shall include that species in the report prepared and submitted to the Governor and the Legislature pursuant to Section 2075.6.~~

~~(3) If the petitioned action is the removal of a species from the list of endangered species or the list of threatened species, the commission shall publish a notice of proposed rulemaking pursuant to Section 11346.4 of the Government Code to remove the species from the list of endangered species or the list of threatened species. Further proceedings of the commission on the petitioned removal shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~SEC. 10. Section 2075.6 is added to the Fish and Game Code, to read:~~

~~2075.6. The commission shall annually prepare and submit to the Governor and the Legislature a list of species that the commission recommends to be added to the list of endangered species or the list of threatened species. The list shall be accompanied by the department's report for each species prepared pursuant to Section 2074.6, the panel's comments prepared pursuant to Section 2074.9, and the economic assessment~~

1 ~~report prepared pursuant to paragraph (1) of subdivision~~
2 ~~(b) of Section 2075.5.~~

3 ~~SEC. 11. Section 2076.5 of the Fish and Game Code is~~
4 ~~repealed.~~

5 ~~SEC. 12. Section 2077 of the Fish and Game Code is~~
6 ~~amended to read:~~

7 ~~2077. (a) The department shall review species listed~~
8 ~~as an endangered species or as a threatened species every~~
9 ~~five years to determine if the conditions that led to the~~
10 ~~original listing are still present. The review shall be~~
11 ~~conducted based on information which is consistent with~~
12 ~~the information specified in Section 2072.3 and which is~~
13 ~~the best scientific information available to the~~
14 ~~department. The review shall include a review of the~~
15 ~~identification of the habitat that may be essential to the~~
16 ~~continued existence of the species and the department's~~
17 ~~recommendations for management activities and other~~
18 ~~recommendations for recovery of the species. The~~
19 ~~department shall notify any person who has notified the~~
20 ~~commission, in writing with their address, of their~~
21 ~~interest, and the department may notify any other~~
22 ~~person.~~

23 ~~(b) The review of species that are listed by both the~~
24 ~~commission and the United States Department of~~
25 ~~Interior shall be conducted in conjunction with the~~
26 ~~five-year review process of the United States Department~~
27 ~~of Interior.~~

28 ~~(c) The initial review of those species listed by the~~
29 ~~commission before January 1, 1982, that are not listed by~~
30 ~~the federal government shall be undertaken and~~
31 ~~completed by July 1, 1987. The initial review of those~~
32 ~~species listed by the commission between January 1, 1982,~~
33 ~~and January 1, 1996, that are not listed by the federal~~
34 ~~government shall be undertaken and completed within~~
35 ~~five years of the date the species was originally listed by~~
36 ~~the commission.~~

37 ~~(d) Notwithstanding any other provision of this~~
38 ~~section, the commission or the department may review~~
39 ~~a species at any time based upon a petition or upon other~~
40 ~~data available to the department and the commission.~~

~~(c) The department shall report in writing to the commission the results of its five year review for each listed species. The commission shall treat any report of the department under this subdivision that contains a recommendation to add a species to, or remove a species from, the list of endangered species or the list of threatened species as a department recommendation submitted pursuant to Section 2072.7.~~

~~SEC. 13. Section 2079.5 is added to the Fish and Game Code, to read:~~

~~2079.5. Just compensation shall be paid for any taking of private or public property to the owner of the property, including compensation for damages incurred by the owner as a result of the taking. For the purposes of this section, the term "taking of private or public property" means the foreclosure of any use of private property or public property that is otherwise allowed under federal, state, and local law that is caused by any of the following acts if that act by itself, or in combination with other foreclosures of use so caused, reduces the fair market value of the property by 20 percent or more:~~

~~(a) The inclusion of a species in a list of endangered species or a list of threatened species.~~

~~(b) The designation of a critical habitat for that species.~~

~~(c) The implementation of a recovery plan for that species.~~

~~(d) Any other act that is authorized or required by this chapter.~~